

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

DANIEL S. SIMON; AND THE LAW  
OFFICE OF DANIEL S. SIMON, A  
PROFESSIONAL CORPORATION,

Respondents/Cross-Appellants.

NO. 83258

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District Court Case No. A-16-738444-C  
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A-18-767242-C

**Respondents' Reply to Appellants' Response to Order to Show Cause**

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The first appeal by Appellants ("Edgeworths") was addressed by this Court in *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (Table)(Nev. 2020)(Case Nos, 77678/78176)(unpublished disposition). Proceedings occurred in the district court following remand. Edgeworths then filed a second notice of appeal.

On August 20, 2021, this Court raised a question as to the proper inclusion in the current appeal of two items of the district court's order of June 18, 2021. Each item is addressed in the order raised.

First, Edgeworths below filed a motion seeking an order requiring disbursement of monies held in trust per the subject fee dispute. The motion was opposed because the fee dispute is ongoing, the money is safekept, because the involved parties had entered an agreement to maintain the disputed funds in a blocked interest-bearing account, and because of a jurisdiction question. The district court declined to grant the motion.

Respondent (Simon) holds that the order is not an appealable special order per NRAP 3A(b)(8), nor is an appeal of the order necessary because the current appeal will address the issue raised. Unlike *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002), the district court order here maintains the *status quo* until proceedings are resolved. Additionally, the argued impact is attenuated and a step away from the judgment appealed from. Unlike *Gumm*, the district court here did not issue an order directing disbursement of funds. Rather, the Edgeworths filed the motion to disburse after the order, and first raised the issue, the decision of which they seek to appeal. In other words, the Edgeworths created the issue,

the issue did not grow from the judgment of the district court. Also, raising this issue on appeal for the first time after the filing of the second notice of appeal following the first disposition and remand raises the issue of waiver.

Second, following the disposition of the first appeal, *for the first time* the Edgeworths filed a motion seeking production of the underlying file. Simon opposed the motion because the file had been previously produced with certain matters redacted because of a confidentiality agreement with the product manufacturer in the underlying case, because the motion was vague, and because the relief sought was not proportional as most of the file had already been produced, thus providing the large file again was an unneeded expense. The district court did not grant the motion.

Simon submits the order regarding file production is not an appealable special order per NRAP 3A(b)(8). The Edgeworth motion to reproduce the file does not grow out of the judgment previously entered and is relief which was first sought after disposition of the first appeal. The district court order of lien adjudication does not address disposition of the underlying case file. Therefore, the district court order denying the subsequent motion did not grow from the adjudication order. There is also the issue of waiver, this relief was not requested until after disposition and remand of the first appeal.

Simon also questions the ability to appeal the district court order of June 18, 2021, on the matters raised.

Dated this 4<sup>th</sup> day of October 2021.

/s/ James R. Christensen

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of October 2021, I served a copy of the foregoing REPLY TO RESPONSE TO OSC electronically to all registered parties.

/s/ Dawn Christensen

an employee of JAMES R. CHRISTENSEN